

BRAVERMAN KASKEY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

ONE LIBERTY PLACE, 56TH FLOOR
PHILADELPHIA, PA 19103-7334
PH (215) 575-3800 Fx (215) 575-3801
www.braverlaw.com

(215) 575-3918
mwalker@braverlaw.com

April 5, 2011

Via E-mail (Thomas.Donzetta@epamail.epa.gov)

and U.S. First Class Mail

Donzetta Thomas
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Mailcode (3RC50)
Philadelphia, PA 19107

Re: **Arsenal Business Center – Administrative Compliance Order,
Dkt. No.: CAA-3-2011-0143DA**

Dear Ms. Thomas:

We are counsel to and writing on behalf of Arsenal Associates and Hankin Management Inc. (collectively referred to as “Arsenal Parties” or “Arsenal”). We are grateful for the opportunity to have met with you and Ms. Convery yesterday to discuss in a cooperative setting the Administrative Compliance Order issued upon the Arsenal parties at the Arsenal Business Center. Pursuant to our discussions, we submit this preliminary response and proposed revisions thereto.¹

The National Emission Standards for Hazardous Air Pollutants (“NESHAP”) as well as the Title 6 of the Philadelphia Health Code require inspections for regulated asbestos-containing material in any building before demolition. To the best of our knowledge, information and belief, all buildings currently under demolition at the former Frankford Arsenal site have had proper inspections and have obtained approved permits through the City of Philadelphia Department of Licenses and Inspections. Indeed, the protocol that we have followed has been to (i) engage an environmental specialist on a full time basis to identify and ensure that any asbestos materials discovered during the demolition process would be handled properly; (ii) inspect the properties for the purpose of identifying environmental risks; (iii) develop technical specifications for remediation,

¹ As stated yesterday, we are pleased to work with the EPA to resolve the issues raised in the Administrative Compliance Order, but we deny that the Arsenal Parties have violated any laws, rules or regulations.

BK

if any; (iv) bid the work; (v) air monitor the abatement of asbestos and the demolition of buildings to ensure that any asbestos-regulated material involved in the demolition is handled according to all City, state and federal regulations; and (vi) engage, as needed, a City-certified asbestos contractor to handle and properly dispose of all asbestos materials in compliance with applicable law. Arsenal has engaged Eagle Industrial Hygiene Associates, Inc. ("Eagle") as the environmental specialist/asbestos inspection company, Haines & Kibblehouse as the demolition contractor, and Delaware Valley Remediation LLC ("DVR") as one of the asbestos removal contractors. In so doing, my clients have made every effort to comply with all federal, state and local laws in connection with the development of the Arsenal site.

Location and History

By way of background, the Arsenal Business Center occupies a portion of the former Frankford Arsenal property located at 5601 Tacony Street in Philadelphia, Pennsylvania. The former Frankford Arsenal was established in 1816 and is the second oldest arsenal in the United States. The site encompassed 109.36 acres associated with five separate parcels that were obtained by various deed acquisitions and property transfers between 1816 and 1951. The site was historically used as a research, manufacturing and distribution facility that also researched, developed, tested and dispensed ammunition, small arms, artillery, cavalry equipment in support of the United States war with Mexico, the Civil War, the Spanish-American War, World War I and II, the Korean War and the Vietnam War. The U.S. Army also conducted research, development and manufacturing involving low-level radiological materials at the Arsenal. All operations ceased and the Frankford Arsenal was closed in 1977. Immediately following the closure of the facility, extensive assessments and decommissioning/decontamination efforts were initiated and completed by the Department of Defense U.S. Army Toxic and Hazardous Materials Agency before transferring the property to the General Services Administration (GSA) for subsequent disposition. In November 1981, 21.63 acres of the site were conveyed by the National Park Service, Mid-Atlantic Region to the Pennsylvania Fish Commission, currently known as the PA Fish and Boat Commission. Dietz & Watson acquired a five-acre portion of the Fish and Boat Commission property before 2004. By deed dated December 20, 1983, the remaining 87.73 acres were conveyed by the GSA to the Philadelphia Authority for Industrial Development.

Through a series of transactions in 1984, Arsenal Associates (a Pennsylvania limited partnership) became the equitable owner of the 87.73-acre tract. The property is known as the Arsenal Business Center. The property includes approximately 90 buildings situated in a business park-like setting. Over the years, detailed inspections and assessments of all buildings have been performed to identify potential environmental concerns including asbestos containing materials. Certified asbestos contractors have been hired to properly dispose of any asbestos materials found in accordance with applicable laws and certified environmental specialists have been engaged to monitor all

BK

demolition activities for the presence of asbestos-containing materials so they may be properly disposed.

In August, 2010, demolition began at the Arsenal to make way for a 500,000-square-foot shopping complex known as The Shopping Center at the Arsenal (the "Project") which will serve the Northeast Philadelphia communities and beyond. This Project has received full support from former Pennsylvania Governor Edward Rendell, former Senator Arlen Specter, Philadelphia Mayor Michael Nutter, U.S. Representative Allyson Schwartz (Pa.-13th), Philadelphia Councilwoman Joan Krajewski, Deputy Assistant Secretary of the Army for Environment, Safety and Occupational Health Addison (Tad) D. Davis as well as many other elected officials from the state and federal government. The Project has been endorsed by the community and local business and civic associations and is expected to create at least 250 construction jobs during its development and more than 900 permanent retail jobs.

This \$60 million shopping center is key to preserving the historical infrastructure of the Arsenal. All profits generated from the development of The Shopping Center at the Arsenal must be used to maintain and preserve the "Certified Historic Structures" in the Southern section of the Arsenal, in accordance with the approval of the Pennsylvania Museum and Historic Commission. These include several 194-year old buildings that, by 1940, served as the preeminent site for the production of military ammunition in the United States. These buildings are now home to two charter schools – Maritime Academy Charter School and The Franklin Town Charter High School – as well as several businesses including Thomson Reuters and the Philadelphia Rare Books and Manuscripts Company.

Response and Proposed Revisions

First, the Administrative Compliance Order states that Arsenal Associates is "registered as Michael Markovitz, Trustee LLC" (ACO, Para. 7). This is incorrect. Arsenal Associates, L.P., is a Pennsylvania limited partnership that owns a number of industrial condominium units in the business complex known as the Arsenal Business Center. Arsenal, Inc is the general partner of Arsenal Associates L.P. The Administrative Compliance Order also, incorrectly, lists Hankin Management Company as a respondent (ACO, Para. 8). Hankin Management Inc. and/or Hankin Management Company has no employees, and is neither an owner nor operator in the property known as the Arsenal Business Center. Thus, it is inappropriate for Hankin Management Company to be named on the Administrative Compliance Order.

Response to Order for Compliance (ACO, Para. 55):

- A. **Complied.** All asbestos abatement work being undertaken at the Arsenal has ceased. All of the work that was being undertaken was in accordance with appropriately issued governmental permits, but that work has immediately ceased pending authorization from the EPA and AMS for the work to re-

commence. The demolition of the buildings for which demolition permits have been issued ceased as of April 4, 2011.

B. Complied. "DANGER ASBESTOS HAZARDOUS – DO NOT ENTER" signs have been posted and are being posted as follows:

- (i) At all door entrances to Buildings #57, #121, #123, #125, #235 and #301 are being secured so no one can have access through the entrance doors to these buildings.
- (ii) All of the steam tunnels in the Facility have been previously secured with layers of plastic, plywood and plastic. All of those secured entrances have been, or are being, posted with the above-referenced signs to the extent that we are able to gain access to them. We may not be able to gain access to some of the tunnels because of having previously secured the entrance ways to these buildings

Additionally, as some of the buildings have been classified as Imminently Dangerous ("ID"), our employees will not enter these buildings in order to ensure their safety.

- (iii) We have posted, or are in the process of posting, signs at the only entrance to the Arsenal Facility which is on the eastern side of the property near Building #222. There are no other entrances into the Facility.
- (iv) The above-referenced signs have been, or are being, posted every fifty (50) feet from the southwestern corner of Building #44 and the fencing from the eastside of Building #44 along the Frankford Creek. All of the signs have been placed in plastic and being affixed to the fencing.

C. Complied. As noted above, the doorway entrances to Buildings #57, #58, #121, #123, #125, #235 and #301 are being sealed to prevent access and the signs referenced in subsection B herein above are being posted at each of those locations.

D. Complied. The fencing for the Arsenal Facility was inspected last weekend. All locations were properly secured.

E. AMS directed our asbestos remediation contractors to leave the site as of last Friday and, therefore, we are not able to arrange for them to remove the asbestos containing bags in Buildings #121 and #123. Pending the approval of the EPA, we will arrange for a licensed asbestos contractor to remove these

bags promptly and dispose of them with a licensed asbestos disposal company to a licensed asbestos dump site.

F. We have requested an extension of time of two weeks to comply.

Unfortunately, we have to hire a new consultant to prepare the RFP's to address the issues raised in this subsection. Eagle Industrial Hygiene has been intimidated by AMS personnel to the extent that they are not willing to undertake the preparation of the RFP's or to supervise the remediation work in Buildings #57, #58, #121, #123, #125 and #235. They have prepared an RFP for Building #301 which, according to Eagle Industrial Hygiene, has been submitted to three (3) contractors for bids. We will be meeting with two additional consultants prior to choosing Eagle's replacement. Once the Eagle replacement has been chosen, we will work with them to address any asbestos containing material in Buildings #57, #58, #121, #123, #125, 235 and any other Facility.

The remaining tunnels, which have not been remediated, and Building #301 have had RFPs prepared by Eagle. We are awaiting proposals from three remediation companies to handle the removal of the asbestos in the buildings for which RFP's have been prepared.

As soon as we receive the second bids for the ACM removal work in the tunnels from Buildings #55 to #48 and #55 to #64 that work can start. Unfortunately, our contractors will not come back onto the property until AMS revokes the Cease and Desist Order which they gave to them last week. None of the contractors will set foot on the property as long as that Cease and Desist Order is outstanding.

G. We have been trying to schedule a meeting with two (2) other consultants, Keating and IPlace. Unfortunately, the inclement weather last week caused those meetings to be delayed.

H. We request an extension of time of two weeks to comply, except as stated below.

- (i) **We request an extension of time of two weeks to comply. See Para. F. *supra*.**
- (ii) **Complied.** The only legal entrance to the Facility has been attended by a security guard twenty-four hours a day, seven days a week. A security guard is now patrolling the Facility Monday through Friday when the demolition crew is not on the job and all day on the weekends.

BK

- (iii) We will hire a contractor to wet the ACM material in the bags, none of which were deposited by the respondent. The bags will then be properly handled and secured by a licensed disposal contractor after which the bags will be placed in a proper container for delivery to a certified disposal site, in compliance with applicable rules and regulations.
- (iv) The RFPs prepared by the consultant will specify exactly how the ACM will be addressed.
- (v) Eagle has prepared RFPs for all of the tunnels within the Facility. The RFPs specify how the removal is to be addressed. We are waiting for proposals from the same three remediation contractors.
- (vi) Those buildings which have been classified as "ID" were to be demolished in accordance with City requirements and NESHAP standards whereby the asbestos material, when encountered, would be wetted and properly segregated and handled for removal in accordance with NESHAP's standards. This work was in the process of being appropriately handled for Buildings #247 and #248 prior to AMS shutting down the job. Demolition of the remainder of Building #58, which has also been classified as "ID", has been stopped by AMS personnel. Upon information and belief, AMS directed our consultant Eagle not to proceed with any work on this project. We have been waiting for the City of Philadelphia inspectors from the Department of Licenses and Inspections to inspect Buildings #45 and #301 to determine if they are to be classified as "ID". We consider them dangerous, but the classification is subject to the determination of the inspectors of the City. Our demolition contractor, Haines and Kibblehouse, has been attempting to schedule the inspections from the Department of Licenses and Inspections of the City. Upon information and belief, the inspectors have been reluctant to visit the site due to the actions of AMS.
- (vii) It has been our intention to address the demolition of the Building #58 slab as described in the prior section, but as previously stated, AMS personnel have advised our consultant that the work could not proceed notwithstanding the "ID" classification.
- (viii) We will comply.

We respectfully request additional time to comply with the Order of Compliance to, *inter alia*, hire the consultants and asbestos removal contractors for the project. As previously stated, Eagle Industrial Hygiene, our asbestos consultant company for this project, is unwilling to continue working on the project, because of intimidation by AMS.

BK

As a result, we have to interview additional replacement consultants to determine with whom we will work. One of the other contractors with whom we worked with in the past, choose not to work on this project due to apparent intimidation by AMS. As stated above, we have already met with one consultant and are trying to schedule meetings with two other consultants. It will probably take these consultants at least fifteen (15) business days to perform their inspections and prepare their RFP's for them to submit to the remediation contractors for their proposals.

Pursuant to your request by email today, the Buildings affected by the City's April 1, 2011 letter are: Buildings 44, 55, 64, 48, 143, 247 and 248. At this time, Building 44 is the only building with a pending demolition permit. Buildings which have received prior demolition permits, on which we have submitted NESHAP Notifications previously, and on which we believe work should proceed are: Buildings 47, 48A, 48B, 48C, 48D, 48E, 51, 52, 55, 64, 120, 141, 141A, 142, 142A, 149, 150, 224, 228, 247, 248, 250, 307 and 308. Permits and NESHAP Notifications for these Buildings will be submitted under separate cover. In particular, Building 58 was designated as Imminently Dangerous by Philadelphia Department of Licenses & Inspections which requires that the property be promptly demolished. We propose to finish the demolition of Building 58 in accordance with the City's rules and regulations for the demolition of Imminently Dangerous Buildings. Building 48A-E has been partially demolished and poses a hazard if demolition is not continued.

Not
Permit
for

We look forward to continued, cooperative discussions with the EPA with the goal of resolving all pending issues and moving this project forward. Please do not hesitate to contact us if you have any further questions or concerns.

Sincerely,



Michelle S. Walker

cc: Ms. Christine Convery (convery.christine@epa.gov)
David I. Braverman, Esquire
Judson Aaron, Esquire (JAaron@conradobrien.com)